

ARTICLE XIII, SECTION 14
RESIDENTIAL OPEN SPACE - CONSERVATION SUBDIVISION
DEVELOPMENT

Pursuant to NH RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for a Conservation Subdivision Development in accordance with the restrictions and requirements of this section. The Planning Board is further authorized to adopt amendments to the Subdivision Regulations in order to further administer the requirements of this ordinance.

14.1 Purpose: The purpose of this ordinance is to (1) encourage environmentally sound planning to protect open space and natural resources, and create attractive living environments, and (2) through creative placement of dwelling units, discourage consumption of scenic, forested, agricultural, and recreational land for development, thus maintaining the rural character and advancing the goals stated in the master plan. The Planning Board shall consider the following purposes and balance them accordingly during review of individual applications.

A.) Maintain and preserve rural character of the Town of Hampton Falls by allowing an alternative residential development option which preserves large areas of open space, provides visual buffers from existing roads and residential development, and permits farming opportunities on parcels of open space.

B.) Preserve large, contiguous parcels of open space throughout the Town.

C.) Provide diversity of housing types, opportunities, and styles.

D.) Encourage road design that will contribute to and enhance a rural atmosphere and maintain adequate safety design.

E.) Provide connected corridors of open land throughout Town for preservation of habitat, environmental resources, and passive recreation.

14.2 Conditional Use Permits: All Conservation Subdivision developments shall obtain a conditional use permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings, and other submittals that are part of the approved use. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board. All developments seeking a conditional use permit shall be administered by the Planning Board to ensure that Conservation Subdivision development opportunities do not adversely impact neighboring properties, or the citizens and Town of Hampton Falls.

14.3 Application Procedure: Applications for conditional use permits for a Conservation Subdivision development shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Hampton Falls Planning Board.

14.4 Approval of Applications: Prior to issuance of a building permit, the applicant shall acquire a conditional use permit as well as any other necessary Planning Board approval. A conditional use permit shall be issued only if a Conservation Subdivision development complies with all of the requirements of this section. The Planning Board may condition its approval on reasonable conditions necessary to accomplish the objectives of this section or of the Hampton Falls Master Plan, Zoning Ordinance, or any other federal, state, Town resolution, regulation, or law, including but not limited to: a reasonable reduction in allowed density; a reasonable increase in required frontage and setbacks; or any other requirement if necessary to accomplish said objectives. The conditional use permit is meant to provide flexibility, minimize adverse impacts, and allow the Board to participate jointly with the applicant to prepare a development that is consistent with this ordinance, regulations, and the Master Plan for the Town of Hampton Falls.

14.5 General: The Conservation Subdivision development provisions of this ordinance provide applicants with an alternative development approach intended to promote flexibility and innovation in land planning. Within this context, the ordinances that are established are intended to be a minimum consideration of allowable impacts. Each tract of land possesses different, unique development characteristics and limitations, and the Conservation Subdivision development use allowed on any particular tract will be a function of innovative land planning and subdivision design interacting with the special characteristics and limitations of the site. The following definitions specifically apply to this Section of the Zoning Ordinance:

Accessory Structure: Anything that is constructed that is of necessity attached directly or indirectly to the ground that is clearly incidental or subordinate to the primary use or structure on the lot.

Affordable: Affordable means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

Buffer: Land area maintained in either a natural or landscaped state and used to visibly separate or screen one use from another or to minimize potentially negative impacts on surrounding areas (e.g., shield or block noise, light or other nuisances, reduce water pollution).

Common Leaching System: A system for the collection and processing via leach fields, the effluent from two or more septic tanks, including all the pipes, valves

and other equipment, land and easements necessary for operating such a system. All of the leaching equipment will be in a single common ownership, though the septic tanks may not.

Common Area: Any parcel or area of land and/or area of water set aside as a result of a conservation subdivision plan. The common area is designed for the benefit and enjoyment of the residents of a conservation subdivision development. These areas may contain structures and improvements necessary and appropriate for the educational, recreational, cultural, social or other noncommercial/nonresidential / non-industrial uses, plus any utility services utilized by the owners of the common area.

Conservation Easement: A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership.

Conservation Land: Land given to a public body dedicated to conservation of forests, park land, etc., or to a private conservation trust, with the intent of preserving the land in its original ecological condition, safeguarding water supplies, or diminishing flood danger.

Deed Restriction: See Restrictive Covenant.

Farm/Agriculture: Any land, buildings or structures on or in which agriculture and farming operations are carried out as the principal use, including all operations outlined in NH RSA 21:34:a II.

Homeowners Association: A private non-profit corporation, association, or other non-profit legal entity organized in accordance with state law and established by the developer or the member individuals for the benefit and enjoyment of the residents of the Conservation Subdivision Development, including oversight and management of common open space facilities. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the common area when applicable and may charge dues to cover expenses, which may include tax liabilities of the common area, recreational or utility facilities. Articles of Association or Incorporation must be acceptable to the Planning Board and by the Town Counsel and any other municipal, county, state agency, body, commission or department required by law to approve of the same.

Common Open Space: Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development and/or the Town

and may include such accessory structures and improvements as are necessary, appropriate and approved by the Planning Board.

Open Space Easement: Land whose development rights have been legally restricted, either by deed or by public purchase of those rights. The easement may be so worded as to permit or restrict public access, to allow or disallow recreational development, and similar provisions. Easements are tied to the title of the land, regardless of its subsequent ownership.

Public Open Land: Land purchased by or given to the Town of Hampton Falls for parks, playgrounds, or an undeveloped open space, generally with the intention of making it accessible for public use.

Restrictive Covenant: A restriction on the use of land usually set forth in the deed for the property.

Workforce Housing per NH RSA 674:58: means any housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce Housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3 person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute as housing for the purposes of this subdivision.

Yield Plan: A plan or plan set that shows the maximum number of conforming building lots that is reasonably achievable under a conventional subdivision following the requirements of the zoning ordinance and subdivision regulations.

- 14.6 Strict Adherence:** These provisions shall not be construed as establishing a legal right to a conditional use permit for a conservation subdivision development. Those who wish to pursue their "development rights" to a certain use or development of land should consider developing their land with the permitted, conventional subdivision approaches, or through the variance procedure as provided for by New Hampshire law.
- 14.7 Lot Size and Frontage:** The minimum lot size for a Conservation development is 20 acres. The minimum frontage for the development shall be a contiguous 100 feet and of sufficient length to provide safe access for a right-of-way of at least 50 feet. At least one access shall be within the minimum frontage. The minimum frontage and access shall be within the Town of Hampton Falls. If, however, the subject parcel has frontage of 50 feet or greater and was in existence prior to the

date of adoption of this ordinance, then 50 feet shall be the minimum required frontage for such pre existing lots. Frontage lands on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks. After the passage of this ordinance, any parcel that subdivides more than 50% of the frontage away from the parent parcel shall not be eligible for a Conservation Subdivision development for a period of 4 years from the date of the subdivision approval. Merging the required parcels with the parent parcel to achieve the 50% original required frontage shall nullify this restriction.

14.8 Density: Maximum density for a Conservation Subdivision Development - shall be determined by use of a yield plan. The purpose of a yield plan is to show the maximum number of conforming buildable lots that is reasonably achievable under a conventional subdivision following the requirements of the zoning ordinance and subdivision regulations. The Planning Board may adopt regulations that provide for the generation of a yield plan in accordance with this section.

14.9 Density Bonus: The Planning Board may award a development an additional number of conforming buildable lots as a density bonus, if the required criteria as performance standards are met. Additional density allowances are based on the number of conforming buildable lots achievable under the yield plan baseline. The allowances are cumulative and may be allowed based on the following performance standards:

A.) Density Bonus (Conservation): Conservation of greater than fifty percent (50%) of the parcel as designated open space may receive a five percent (5%) increase in the number of allowable buildable lots for every additional ten percent (10%) of open space protected. In no case shall the total density bonus be greater than fifteen percent (15%) of the allowable buildable lots as indicated by the approved yield plan.

B.) Density Bonus (Affordable Housing): A density bonus of 15% above that indicated by the approved yield plan will be allowed for development that will guarantee:

- I.** 20% of the total number of units proposed within the development (including all units allowed by density bonuses) shall meet the requirements of the definition of affordable/workforce housing per NH RSA 674 as amended;
- II.** Such designated affordable/workforce housing units shall be incorporated within the development as a whole (not grouped contiguously) and shall match the architectural characteristics of such development;
- III. Assurance of continued affordability.** Affordable units offered for sale and approved by the Planning Board as part of a subdivision or site plan and subject to NH RSA 674:58-61 shall require a restrictive covenant and lien granted to the Town of Hampton Falls. The initial

value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The Town of Hampton Falls lien is indexed over time at a rate equal to the consumer price index identified in the restrictive covenant and lien document. Future maximum resale limits shall be calculated as the fair market value minus the adjusted lien value and a transaction administrative fee. Subsequent sales prices are not limited based on income targets, but on the combination of the housing unit's fair market value, minus the adjusted lien value, and adherence to the definition of workforce housing contained in this Article. The restrictive covenant and lien shall be in a form approved by the Planning Board.

- IV. Documentation of restrictions.** Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Article must be set forth on all plans filed with the Town's Planning Board and with the Registry of Deeds.
- V. Certificate of Occupancy.** No certificate of occupancy shall be issued for an affordable housing unit without written confirmation of the income eligibility of the tenant or buyer of the affordable housing unit and confirmation of the rent or price of the affordable housing unit as documented by an executed lease or purchase and sale agreement.
- VI.** Ongoing responsibility for monitoring the compliance with resale and rental restrictions on affordable units shall be the responsibility of a monitoring agency of the Planning Board's choice including, but not limited to, the New Hampshire Housing Finance Authority. If the Planning Board's choice for monitoring and compliance is the New Hampshire Housing Finance Authority then the owner of said affordable units shall follow the requirements as set forth in the New Hampshire Housing Finance Authority's Model for Homeownership Affordability Retention Lien as amended.

C.) Every development seeking such bonuses shall provide the Planning Board with easements, covenants, or deed restrictions, which shall provide for the perpetual continuation of the performance standards, which are used in the granting of any bonus. Said easements, covenants, or deed restrictions shall be reviewed by qualified legal counsel on behalf of the Town (at the developer's expense) and approved by the Planning Board prior to the issuance of any final approval.

D.) Where a final number is greater than 0.5, the density number may be rounded up to the next whole number.

14.10 Standards for Approval: All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.

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- A.)** The proposed Conservation Subdivision is in compliance with this ordinance and is in the public interest;
- B.)** There will be no greater diminution of surrounding property values than would be created under any other use or development permitted in the underlying zone;
- C.)** That there are no existing violations of the Hampton Falls zoning ordinance on the subject property;
- D.)** That the character of the area shall not be adversely affected. This determination, to be made by the Planning Board, shall be made by considering the following aspects of the surrounding area:
 - I. Consistency of Architecture:** Determined through analysis of the following:
 - a.)** Roof pitches;
 - b.)** Siding types;
 - c.)** Architectural styles of residential structures;
 - d.)** Proportional aspects of facades, building locations on lots.
 - II. Transportation:** Determined through analysis of the following:
 - a.)** Access for safety vehicles onto the site, within the site, and to individual houses;
 - b.)** Capacity of nearby and affected intersections, and transportation corridors;
 - c.)** Cost for municipality to maintain roadways;
 - d.)** Layout, width, and construction of roadways on the site.
 - III. Protection of Natural Resources:** Determined through analysis of the following:
 - a.)** Protection of environmentally sensitive areas, including but not limited to, wetlands, shore land buffers, wildlife corridors, significant groundwater resources, etc;
 - b.)** Maintenance of viewsheds and other visually appealing aspects of the site.
 - IV. Protection of Cultural Resources:** Determined through analysis of the following:
 - a.)** Establishment of new and protecting existing trailways for travel;
 - b.)** Protection of historic buildings or significant historical landscapes;
 - c.)** Establishment, protection, and promotion for agricultural uses of the site.
- E.)** That granting the permit will not result in undue municipal expense;

- F.) That the proposed development will be constructed in a manner compatible with the spirit and intent of the Hampton Falls Master Plan and Zoning Ordinance;
- G.) That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted. Mitigation of these impacts by the developer can be properly considered in granting of a conditional use permit;
- H.) That the general welfare of the Town will be protected; landscaping or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the Town.

14.11 OTHER REGULATIONS APPLICABLE: The Planning Board shall apply applicable sections of the Subdivision Regulations not otherwise addressed by this ordinance, including the right to waive such regulations. Where the provisions of this Article and the provisions of the Subdivision Regulations conflict, the more restrictive shall apply.

14.12 MINIMUM OPEN SPACE REQUIREMENTS: In addition to the requirements of this section, the Planning Board may adopt regulations that prescribe additional criteria for Open Space parcels.

- A.) The parcel must contain a minimum of fifty (50%) percent of the total land in the parcel dedicated as open space/conservation land. Forty (40%) percent of the minimum fifty (50%) percent of the open space/conservation land shall be contiguous.
- B.) No more than fifteen (15%) percent of the required fifty (50%) percent minimum of total land in the parcel that shall be dedicated as open space/conservation land may be wetlands as defined in the Town of Hampton Falls' Zoning Ordinance.
- C.) The minimum required open space is land unbuilt upon, which must be permanently kept in that condition.
- D.) Common water well servicing an entire conservation subdivision development shall be permitted in the dedicated open space/conservation land.
- E.) Water wells located on individual building lots within a conservation subdivision may have a well radius that lies within the dedicated open space/conservation land.
- F.) The open space and/or common area within a conservation subdivision development shall be owned by and bound by one or more of the following:

- I. Homeowners Association: May use it for common recreational facilities or may designate it as open space, or may grant a public body an Open Space Easement.
- II. A Public Body: Shall use it as conservation land or public open land. Such designation must be made prior to approval of the subdivision application by the Planning Board; such lands shall be held in such type of legal entity as the Planning Board deems appropriate.
- G.) Such land shall be preserved in perpetuity through deed restriction or conservation easement, and designated on the approved and recorded plat. Such restriction (at the developer's expense) shall be approved by the Planning Board and Town Counsel.

14.13 GENERAL REQUIREMENTS:

A.) Uses:

- I. Residential uses shall be permitted in Conservation Subdivision Developments;
- II. Single-family detached homes shall be permitted in Conservation Subdivision Developments.

B) Setbacks and Other Dimensions:

- I. All buildable lots within the conservation subdivision shall be at least 15,000 square feet in size and be able to contain an individual septic system within each lot. The following frontage requirements shall apply:
 - a.) Each single-family detached home/buildable lot shall have 75' of frontage on interior roadways;
 - b.) All buildable lots shall contain lot monumentation that designate a reasonable amount of land attributable to each particular lot.
- II. The following setbacks shall apply to all residential structures within the development:
 - a.) Setbacks from exterior property lines of the entire parcel shall be twenty five (25') for single-family detached units;
 - b.) Setbacks from the edge of pavement for roadways within, and part of, the development shall be thirty feet (30');
 - c.) Setbacks for structural separation of all single-family unit structures within the development shall be forty feet (40');
 - d.) Structural setbacks from all lot lines shall be ten feet (10').

C. Utilities: All utilities serving the development shall be underground.

14.14 EXPIRATION: Any Conditional Use Permit shall expire if active and substantial development or building has not begun on the site by the owner or the owner's successor in interest in accordance with the approved plat within 12 months after recording the approved plan with the Rockingham County Registry of Deeds. As part of its approval of a plat or plan, the Planning Board may, with due regard to the scope and details of a particular project, specify the threshold level of work which shall constitute "active and substantial development or building" for purposes of fulfilling this paragraph. In such cases, a new application for a Conditional Use Permit must be completed.

14.15 CONDITIONS: The Planning Board may impose higher standards than allowed by this Section when they determine that because of special site and land conditions, an adverse impact would be created by allowing development to be built to the standards delineated in this Section.

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